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PTO/SB/65 (03-09)  
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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE  
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**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF  
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Docket Number (Optional)

**RECEIVED**

Mail to: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450  
Fax: (571) 273-8300

APR 30 2012

OFFICE OF PETITIONS

2012 APR 26 AM 11:49

USPTO  
PATENTS ACCOUNTING  
DIVISION

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent Number: 5,779,392

Application Number: 719,520

Issue Date: JULY 14, 1998

Filing Date: SEPT 27, 1996

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable:

The above-identified patent:

☒ is a reissue of original Patent No. 5,779,392 original issue date JULY 14, 1998  
original application number 719,520  
original filing date SEPT 27, 1996

☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application  
filed on \_\_\_\_\_

**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

APRIL 19, 2012

Date

  
Signature

**JOSEPH B MENDES**

Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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## 1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

## 2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

## 3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ _____	7 ½ yr fee	(1552)	<input checked="" type="checkbox"/> \$ <u>1425.00</u>	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input checked="" type="checkbox"/> \$ <u>2365.00</u>	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ 3790.00

## 4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700.00 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.SURCHARGE FEE BEING SUBMITTED \$ 700.00

A CHECK IN THE AMOUNT OF \$4900.00 WAS PAID ON JANUARY 9, 2012 FOR THE FEES LISTED ABOVE

## 5. MANNER OF PAYMENT

- ☐ Enclosed is a check for the sum of \$ \_\_\_\_\_
- ☐ Please charge Deposit Account No. \_\_\_\_\_ the sum of \$ \_\_\_\_\_
- ☐ Payment by credit card. Form PTO-2038 is attached.

## 6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☐ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. \_\_\_\_\_

## 7. OVERPAYMENT

As to any overpayment made, please

☐ Credit to Deposit Account No. \_\_\_\_\_

OR

☒ Send refund check**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

## 8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

## 9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.



Signature(s) of Petitioner(s)

APRIL 19, 2012

Date

Joseph B Mendes

Typed or printed name(s)

Registration Number, if applicable

28701 SW 182 Ave

Address

305-247-9442

Telephone Number

Homestead FL

Address

## ENCLOSURES:

- ☐ Maintenance Fee Payment
- ☐ Statement why maintenance fee was not paid timely
- ☐ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)
- ☒ Other:

ADDITIONAL DOCUMENTATION REQUESTED BY PATENT OFFICE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

  
Signature

APRIL 19, 2012

Date

Joseph B Mendes

Type or printed name

Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

See SHOWING attached

SUBSTANTIAL SUPPORTING DOCUMENTATION PREVIOUSLY submitted

(Please attach additional sheets if additional space is needed)

RECEIVED

APR 30 2012

AFFIDAVIT

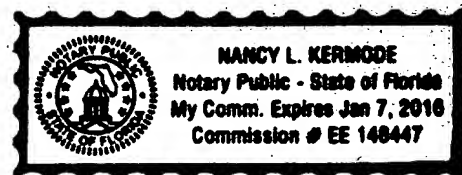
OFFICE OF PETITIONS

THIS IS TO AFFIRM THAT ALTHOUGH MY HUSBAND, JOSEPH MENDES AND I DID RECEIVE NOTIFICATION FROM OUR PATENT ATTORNEY OF THE REQUIREMENT TO PAY MAINTANENCE FEES DUE ON HIS PATENT, MY HUSBAND'S HEALTH ISSUES WERE DEBILITATING ENOUGH TO PREVENT US FROM ATTENDING TO THEM IN A TIMELY MANNER. AS DETAILED IN THE SHOWING, HIS SERIES OF HEALTH ISSUES REQUIRED HIM TO HAVE 24 HOUR A DAY ASSISTANCE WITH BASIC LIFE FUNCTIONS SUCH AS EATING, BATHING, READING AND GETTING TO AND FROM THE BATHROOM. THE AMOUNT OF TIME AND ATTENTION REQUIRED TO MANAGE HIS HEALTH NEEDS, MY OWN NEEDS AND OUR MUTUAL INTERESTS WERE OVERWHELMING. I SIGNED FOR A CERTIFIED LETTER FROM OUR PATENT ATTORNEY REMINDING US OF THE FEES OWED. A COPY OF THE REMINDER LETTER IS ATTACHED. BECAUSE THIS TASK WAS NOT ESSENTIAL TO THE NECESSITIES OF LIFE, IT UNFORTUNETLY BECAME COMPROMISED.

MY HUSUBAND DID NOT RETURN TO WORK AFTER HIS STROKE. HIS REHABILITATION HAS BEEN EXTENSIVE, REQUIRING YEARS OCCUPATIONAL AND PHYSICAL THERAPY. IMPROVING HIS VISION IS AN ONGOING TASK. THE FAILURE TO PAY MAINTANENCE FEES WAS NOT DUE TO IGNORANCE OR THE LACK OF WILLINGNESS TO PAY. IT WAS SIMPLY TRYING TO MAINTAIN THE ESSENTIALS OF LIFE.

INCLUDED IN OUR PREVIOUSLY SUBMITTED SHOWING IS EXTENSIVE DOCUMENTATION FROM MANY PHYSCIANS AND HOSPITALS INVOLVED IN MY HUSBANDS CARE FROM 2003 TO THE PRESENT. IT IS OUR INTENTION TO PRESENT A CLEAR AND USABLE TIMELINE OF THE ISSUES THAT PREVENTED US FROM FULFILLING OUR OBLIGATION TO THE PATENT OFFICE. PLEASE CONTACT US IF ANY ADDITIONAL INFORMATION IS REQUIRED.

*Joseph Mendes*



*Nancy L Kermode*

**MPH****McCormick, Paulding & Huber LLP***Intellectual Property Law***RECEIVED****APR 30 2012****OFFICE OF PETITIONS**

October 27, 2005

Offices in  
Hartford, CT and  
Springfield, MA

From the desk of  
Carol Ann M. Slivinskas  
slivinskas@ip-lawyers.com  
Tel. 860-549-5290  
Ext. 1026  
Fax 860-527-0464

CityPlace II  
185 Asylum Street  
Hartford, CT  
06103-3402  
www.ip-lawyers.com

John C. Linderman\*  
J. Kevin Grogan\*  
Marina F. Cunningham\*  
Daniel G. Mackas\*  
Nicholas J. Tuccillo\*  
Wm. Tucker Griffith\*  
Donald J. MacDonald\*  
Kevin H. Vanderleeden\*  
Jeanne M. Tanner\*  
John A. Kramer\*  
Emily J. Kasperowski\*

\*Admitted in CT

\*Admitted in MA

Patent Agent  
Justin R. Sauer

Technical Consultant  
Chad M. Rink

Of Counsel  
Arthur F. Dionne\*  
Donald K. Huber\*  
John C. Hilton\*  
Frederick J. Haesche\*  
Chester E. Flavin\*  
William C. Crutcher\*  
John J. Dempsey\*

**Certified Mail**

Mr. Joseph B. Mendes  
18702 Southwest 182nd Ave.  
Homestead, FL 33030-1815

Re: U. S. Patent No. 5,779,392 (7080)  
Maintenance Fees Due In The First Quarter of 2006

Dear Mr. Mendes:

Enclosed is an instruction form listing your U. S. patent for which a maintenance fee is due during the first quarter of 2006. For your reference we are also attaching a copy of the front page of this U. S. patent. The stated amount of the payment due includes our service charge. Please note, however, that maintenance fees are mandated by the U. S. Congress and that they were scheduled to change October 1, 2005. Since this did not occur this is to advise that the fee may increase next year.

To insure payment of the maintenance fee in a timely manner and to avoid surcharges or abandonment of your patent rights, please return this form with instructions to pay "P" in the appropriate column by December 1, 2005. In order for us to make the required payment it is requested that you please send us your check along with your payment instructions. Failure to provide such payment will result in your patent lapsing. Should there be any additional payment required due to a U. S. Patent and Trademark Office fee increase you will be billed subsequently. If you wish no payment be made, please indicate your instructions by marking "C" for cancel in the P/C column so that we may mark our records accordingly.

In your response, please indicate if our understanding of your current status as a large or small entity is correct. A small entity is any individual or company, including parent or subsidiary corporations and licensees of the patent, having less than 500 employees.

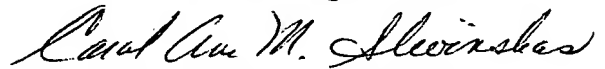
Mr. Joseph B. Mendes

October 27, 2005  
Page 2

In the absence of your instructions, we shall assume that you do not want the listed fee paid and wish to allow your patent rights to be abandoned. If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

McCormick, Paulding & Huber LLP



Carol Ann M. Slivinskas (Mrs.)  
Tax Administrator

/cas  
Enclosures

## SHOWING

The timely payment of maintenance fees were unavoidably delayed due to catastrophic health reasons. Our first maintenance payment was due in the first quarter of 2006. My disabilities first appeared in 2003 as is listed below. They continued to limit my ability to work throughout 2010 when the next maintenance payment was due. I have talked with several representative of the U.S. Patent Office to learn what is required to resolve this issue. I have spent many countless hours gathering supporting evidence of my ongoing health problems, as is evidenced by the amount of paperwork attached (see attached for supporting documentation.) It is my sincere desire to fulfill my obligations regarding my patent.

- In November of 2003 I received a diagnosis of a pseudotumor/shingles in the right eye. This event resulted in permanent scarring of the cornea, which prevented me from daily activities such as driving and using a computer.
- In January of 2004 I suffered a severe stroke. It resulted in full paralysis of my left side. I was unable to sit or stand on my own. Years of therapy ensued until only a basic amount of mobility had been achieved. My fields of vision were permanently damaged.
- In July of 2008, I suffered a type heart attack known as the "widow maker." Three stents were installed with therapy to follow.
- In November of 2009 I had an unsuccessful ankle replacement. The prosthesis was loose inside the ankle and caused me to be confined to a wheel chair for approximately a year and a half.
- In October of 2010 I had the corrective surgery for the ankle. Again, I was not ambulatory for about six months.
- In October of 2011, I had additional foot and ankle surgery, part of which was corrective measures to repair stroke damage. The surgery realigned my gait and helps to correct a dropped foot. I am still not fully ambulatory.





UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

Joseph B. Mendes  
28701 SW 182 Ave.  
Homestead, FL 33033

**MAILED**  
**APR 02 2012**  
**OFFICE OF PETITIONS**

In re Patent No. 5,779,392.  
Issue Date: July 14, 1998  
Application No. 08/719,520  
Filed: SYSTEMS FOR CONTAINING AND  
COLLECTING OIL SPILLS

ON PETITION RECEIVED

APR 30 2012  
OFFICE OF PETITIONS

This in response to the petition under 37 CFR 1.378(b), filed January 11, 2012, to accept the delayed payment of the maintenance fees for the above-identified patent. By way of this communication, the Office is requesting more information from petitioner before a decision can be rendered on the petition.

The above-identified patent issued on July 14, 1998. The second maintenance fee could have been paid during the period from July 14, 2005 through January 17, 2006 or with a surcharge during the period from January 18, 2006 through July 14, 2006. Accordingly, the above-identified patent expired on July 15, 2006, for failure to timely remit the second maintenance fee. On January 11, 2012, petitioner filed the present petition under 37 CFR 1.378(b), requesting the acceptance of the late payment of the maintenance fees for the above-identified patent due at 7.5 and 11.5 years.

In the present petition, petitioner asserts: "Due to a series of catastrophic illnesses, which began in 2003, my ability to work was severely limited and resulted in the unavoidable delay in paying my patent maintenance fees." Petitioner provided a brief description of his health issues, accompanied by letters from his treating physicians and medical records.

A petition under 37 CFR 1.378(b) to accept late payment of a maintenance fee must include:

- (1) the required maintenance fee set forth in § 1.20(e) through (g);
- (2) the surcharge set forth in § 1.20(i)(1); and
- (3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed

promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

The required showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. Furthermore, an adequate showing requires a statement by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them. Copies of all documentary evidence referred to in a statement should be furnished as exhibits to the statement.

Acceptance of a late maintenance fee under the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. 133. This is a very stringent standard. As stated in Section 711.03(c)(II)(C)(2) of the Manual of Patent Examining Procedure:

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

In re Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

Section 2590(I) of the Manual of Patent Examining Procedure for explains:

As 35 U.S.C. 41(b) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 U.S.C. 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees. [Ray v. Lehman, 55 F.3d 606, 609,

34 USPQ2d 1786, 1788 (Fed. Cir. 1995).] That is, an adequate showing that the delay in payment of the maintenance fee at issue was "unavoidable" within the meaning of 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent. *Id.* Thus, where the record fails to disclose that the patentee took reasonable steps, or discloses that the patentee took no steps, to ensure timely payment of the maintenance fee, 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) preclude acceptance of the delayed payment of the maintenance fee under 37 CFR 1.378(b).

In view of the requirement to enumerate the steps taken to ensure timely payment of the maintenance fee, the patentee's lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder do not constitute unavoidable delay. [See *In re Patent No. 4,409,763*, 7 USPQ2d 1798 (Comm'r Pat. 1988), *aff'd sub nom. Rydeen v. Quigg*, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990), *aff'd*, 937 F.2d 623 (Fed. Cir. 1991) (table), *cert. denied*, 502 U.S. 1075 (1992)).] See also Final Rule entitled "Final Rules for Patent Maintenance Fees," published in the Federal Register at 49 Fed. Reg. 34716, 34722-23 (August 31, 1984), and republished in the Official Gazette at 1046 Off. Gaz. Pat. Office 28, 34 (September 25, 1984). Under the statutes and rules, the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due. It is solely the responsibility of the patentee to assure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying a maintenance fee from the patentee to the Office.

Thus, evidence that despite reasonable care on behalf of the patentee and/or the patentee's agents, and reasonable steps to ensure timely payment, the maintenance fee was unavoidably not paid, could be submitted in support of an argument that the delay in payment was unavoidable.

In determining whether the delay in paying a maintenance fee was unavoidable, one looks to whether the party responsible for payment of the maintenance fee exercised the due care of a reasonably prudent person. *Ray v. Lehman*, 55 F.3d 606, 608-609, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995). The patent owner at the time of the expiration of the patent is ultimately the person responsible to ensure the timely payment of the maintenance fees. The patent owner may engage another to track and/or pay the maintenance fees; however, merely engaging another does not relieve the patent owner from his obligation to take appropriate steps to ensure the timely payment of such maintenance fees. See *California Medical Prods. v. Tecnol Medical Prods.*, 921 F. Supp. 1219 (D. Del. 1995). In this instance, petitioner was the patent owner at the time of the expiration of the patent, and therefore, petitioner alone had an obligation to ensure the timely payment of the maintenance fee.

As previously stated, an adequate showing that the delay in payment of the maintenance fee at issue was "unavoidable" within the meaning of 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent. However,

petitioner did not submit any statements supported by documentary evidence showing that he had any system in place to ensure the timely payment of the maintenance fees for this patent or that such a system, if employed, was reasonably reliable to notify petitioner of the due dates for payment of the maintenance fees. That is, there is no adequate showing that any steps had been taken with respect to scheduling and paying the maintenance fee by any person.

In the absence of a showing that petitioner was (1) aware of need to pay the second and third maintenance fees and (2) he took steps to ensure timely payment, 37 CFR 1.378(b) precludes acceptance of the payment. In other words, if petitioner was unaware of the need to pay the maintenance fees and no steps were taken by petitioner to track the maintenance fee due dates, then any concurrent and subsequent health problems of petitioner would be immaterial to the delay. The showing must be that when the petitioner's system indicated the maintenance fees fell due, his health problems "unavoidably" prevented him from taking any earlier action with respect to this patent. While the USPTO is aware of the difficulties and hardships involved in this instance, petitioner should include a showing (and copies of documents) that this patent had in fact been entered in a maintenance fee tracking system, and be accompanied by a statement as to how that system operated.

Furthermore, petitioner asserts that his "ability to work was severely limited and resulted in the unavoidable delay in paying in timely paying [his] maintenance fees". The Office reminds petitioner to meet the showing of unavoidable delay, petitioner must demonstrate that his medical incapacitation was of such a nature and degree as to render the patentee unable to conduct business (e.g., correspond with the Office) during the entire period from the maintenance fee was due on July 14, 2006, to the present. For example, how was petitioner able to travel to and from medical appointments, pay his bills, and maintain his affairs during this period of time, but was unable to make timely payment of his maintenance fees. Furthermore, petitioner failed to explain why he did not enlist the aid of others to assist him in managing his patent affairs to ensure the timely payment of the maintenance fee, as a reasonable and prudent person would have done with respect to his most important business.

The Office strongly advises petitioner to redact any personal information in documents submitted to the USPTO that may contribute to identity theft such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) as such information is never required by the USPTO to support a petition.

The Office notes that the address listed on the petition differs from the correspondence address of record. As a one-time courtesy, the Office is mailing petitioner a copy of this communication at the address on the petition. If petitioner would like future correspondence directed to him, petitioner must submit a change of correspondence address. The appropriate form (PTO/SB/123) is attached.

Petitioner is given **TWO (2) MONTHS** from the mail date of this communication to respond to this request for information and submit the necessary documentation. To avoid any confusion, petitioner should consider using Form PTO/SB/65 provided by the USPTO when responding to this

Patent No. 5,779,392  
Application No. 08/719,520

Page 5

communication. No further fees are required when filing the enclosed Form PTO/SB/65 in response to this communication.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                Mail Stop Petition  
                          Commissioner for Patents  
                          P.O. Box 1450  
                          Alexandria, VA 22313-1450

By FAX:                (571) 273-8300  
                          Attn: Office of Petitions

By hand:               Customer Service Window  
                          Randolph Building  
                          401 Dulany Street  
                          Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3211.

/Christina Tartera Donnell/

Christina Tartera Donnell  
Senior Petitions Attorney  
Office of Petitions

Enclosures: Forms PTO/SB/65 and Form PTO/SB/123

Cc:    KENWOOD ROSS AND OR CHESTER E FLAVIN  
         120 MAPLE STREET  
         SPRINGFIELD MA 01103

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 Approved for use through 03/31/2012. OMB 0651-0016  
 U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE  
 PTO/SB/65 (03-09)  
**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**  
 Docket Number (Optional)

Mail to: Mail Stop Petition  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria VA 22313-1450  
 Fax: (571) 273-8300

**NOTE:** If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent Number: 5,779,392

Application Number: 719,520

Issue Date: JULY 14, 1998

Filing Date: SEPT 27, 1996

**CAUTION:** Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

**Also complete the following information, if applicable:**

The above-identified patent:

☒ is a reissue of original Patent No. 5,779,392 original issue date JULY 14, 1998  
 original application number 719,520  
 original filing date SEPT 27, 1996

☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application  
 filed on \_\_\_\_\_

**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

APRIL 19, 2012

Date

*Joseph B Mendes*  
 Signature

**JOSEPH B MENDES**

Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). This information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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Approved for use through 03/31/2012. OMB 0851-0016  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

## 1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

## 2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

## 3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ _____	7 ½ yr fee	(1552)	<input checked="" type="checkbox"/> \$1425.00	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input checked="" type="checkbox"/> \$2365.00	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$3790.00

## 4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700.00 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ 700.00

A CHECK IN THE AMOUNT OF \$4900.00 WAS PAID ON JANUARY 9, 2012 FOR THE FEES LISTED ABOVE

## 5. MANNER OF PAYMENT

- ☐ Enclosed is a check for the sum of \$ \_\_\_\_\_
- ☐ Please charge Deposit Account No. \_\_\_\_\_ the sum of \$ \_\_\_\_\_
- ☐ Payment by credit card. Form PTO-2038 is attached.

## 6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☐ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. \_\_\_\_\_

[Page 2 of 4]

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

## 7. OVERPAYMENT

As to any overpayment made, please

☐ Credit to Deposit Account No. \_\_\_\_\_

OR

☒ Send refund check

## WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

## 8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

## 9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

Joseph B. Mendes  
Signature(s) of Petitioner(s)

APRIL 19, 2012

Date

Joseph B. Mendes  
Typed or printed name(s)

Registration Number, if applicable

28701 SW 182 Ave

Address

305-247-9442

Telephone Number

Homestead FL

Address

## ENCLOSURES:

- ☐ Maintenance Fee Payment  
☐ Statement why maintenance fee was not paid timely  
☐ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)  
☒ Other:

ADDITIONAL DOCUMENTATION REQUESTED BY PATENT OFFICE

[Page 3 of 4]



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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

  
Signature

APRIL 19, 2012

Date

Joseph B Mendes

Type or printed name

Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

See SHOWING attached

SUBSTANTIAL SUPPORTING DOCUMENTATION PREVIOUSLY

(Please attach additional sheets if additional space is needed)

[Page 4 of 4]

APR 30 2012

OFFICE OF PETITIONS

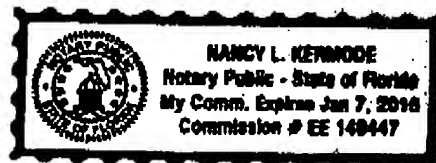
## AFFIDAVIT

THIS IS TO AFFIRM THAT ALTHOUGH MY HUSBAND, JOSEPH MENDES AND I DID RECEIVE NOTIFICATION FROM OUR PATENT ATTORNEY OF THE REQUIREMENT TO PAY MAINTANENCE FEES DUE ON HIS PATENT, MY HUSBAND'S HEALTH ISSUES WERE DEBILITATING ENOUGH TO PREVENT US FROM ATTENDING TO THEM IN A TIMELY MANNER. AS DETAILED IN THE SHOWING, HIS SERIES OF HEALTH ISSUES REQUIRED HIM TO HAVE 24 HOUR A DAY ASSISTANCE WITH BASIC LIFE FUNCTIONS SUCH AS EATING, BATHING, READING AND GETTING TO AND FROM THE BATHROOM. THE AMOUNT OF TIME AND ATTENTION REQUIRED TO MANAGE HIS HEALTH NEEDS, MY OWN NEEDS AND OUR MUTUAL INTERESTS WERE OVERWHELMING. I SIGNED FOR A CERTIFIED LETTER FROM OUR PATENT ATTORNEY REMINDING US OF THE FEES OWED. A COPY OF THE REMINDER LETTER IS ATTACHED. BECAUSE THIS TASK WAS NOT ESSENTIAL TO THE NECESSITIES OF LIFE, IT UNFORTUNETLY BECAME COMPROMISED.

MY HUSUBAND DID NOT RETURN TO WORK AFTER HIS STROKE. HIS REHABILITATION HAS BEEN EXTENSIVE, REQUIRING YEARS OCCUPATIONAL AND PHYSICAL THERAPY. IMPROVING HIS VISION IS AN ONGOING TASK. THE FAILURE TO PAY MAINTANENCE FEES WAS NOT DUE TO IGNORANCE OR THE LACK OF WILLINGNESS TO PAY. IT WAS SIMPLY TRYING TO MAINTAIN THE ESSENTIALS OF LIFE.

INCLUDED IN OUR PREVIOUSLY SUBMITTED SHOWING IS EXTENSIVE DOCUMENTATION FROM MANY PHYSCIANS AND HOSPITALS INVOLVED IN MY HUSBANDS CARE FROM 2003 TO THE PRESENT. IT IS OUR INTENTION TO PRESENT A CLEAR AND USABLE TIMELINE OF THE ISSUES THAT PREVENTED US FROM FULFILLING OUR OBLIGATION TO THE PATENT OFFICE. PLEASE CONTACT US IF ANY ADDITIONAL INFORMATION IS REQUIRED.

*Joseph Mendes*



*Nancy L Kermode*

APR 20 2012

**McCormick, Paulding & Huber LLP**  
*Intellectual Property Law*

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OFFICE OF PETITIONS

October 27, 2005

*Offices in*  
Hartford, CT and  
Springfield, MA*From the desk of*  
Carol Ann M. Stivinskas  
stivinskas@ip-lawyers.com  
Tel. 860-549-5290  
Ext. 1026  
Fax 860-527-0464CityPlace II  
185 Asylum Street  
Hartford, CT  
06103-3402  
www.ip-lawyers.comJohn C. Linderman\*\*  
J. Kevin Grogan\*\*  
Marina F. Cunningham\*  
Daniel G. Mackas\*  
Nicholas J. Tuccillo\*  
Wm. Tucker Griffith\*  
Donald J. MacDonald†  
Kevin H. Vanderleeden†  
Jeanne M. Tanner\*  
John A. Kramer†  
Emily J. Kasperowski†  
\*Admitted in CT  
†Admitted in MA*Patent Agent*  
Justin R. Sauer*Technical Consultant*  
Chad M. Rink*Of Counsel*  
Arthur P. Dionne†  
Donald K. Huber\*  
John C. Hilton\*  
Frederick J. Haesche\*  
Chester E. Flavin†  
William C. Critcher\*  
John J. Dempsey†**Certified Mail**Mr. Joseph B. Mendes  
18702 Southwest 182nd Ave.  
Homestead, FL 33030-1815Re: U. S. Patent No. 5,779,392 (7080)  
Maintenance Fees Due In The First Quarter of 2006

Dear Mr. Mendes:

Enclosed is an instruction form listing your U. S. patent for which a maintenance fee is due during the first quarter of 2006. For your reference we are also attaching a copy of the front page of this U. S. patent. The stated amount of the payment due includes our service charge. Please note, however, that maintenance fees are mandated by the U. S. Congress and that they were scheduled to change October 1, 2005. Since this did not occur this is to advise that the fee may increase next year.

To insure payment of the maintenance fee in a timely manner and to avoid surcharges or abandonment of your patent rights, please return this form with instructions to pay "P" in the appropriate column by December 1, 2005. In order for us to make the required payment it is requested that you please send us your check along with your payment instructions. Failure to provide such payment will result in your patent lapsing. Should there be any additional payment required due to a U. S. Patent and Trademark Office fee increase you will be billed subsequently. If you wish no payment be made, please indicate your instructions by marking "C" for cancel in the P/C column so that we may mark our records accordingly.

In your response, please indicate if our understanding of your current status as a large or small entity is correct. A small entity is any individual or company, including parent or subsidiary corporations and licensees of the patent, having less than 500 employees.

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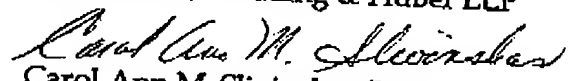
Mr. Joseph B. Mendes

October 27, 2005  
Page 2

In the absence of your instructions, we shall assume that you do not want the listed fee paid and wish to allow your patent rights to be abandoned. If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

McCormick, Paulding &amp; Huber LLP

  
Carol Ann M. Slivinskas (Mrs.)  
Tax Administrator/cas  
Enclosures

## SHOWING

The timely payment of maintenance fees were unavoidably delayed due to catastrophic health reasons. Our first maintenance payment was due in the first quarter of 2006. My disabilities first appeared in 2003 as is listed below. They continued to limit my ability to work throughout 2010 when the next maintenance payment was due. I have talked with several representative of the U.S. Patent Office to learn what is required to resolve this issue. I have spent many countless hours gathering supporting evidence of my ongoing health problems, as is evidenced by the amount of paperwork attached (see attached for supporting documentation.) It is my sincere desire to fulfill my obligations regarding my patent.

- In November of 2003 I received a diagnosis of a pseudotumor/shingles in the right eye. This event resulted in permanent scarring of the cornea, which prevented me from daily activities such as driving and using a computer.
- In January of 2004 I suffered a severe stroke. It resulted in full paralysis of my left side. I was unable to sit or stand on my own. Years of therapy ensued until only a basic amount of mobility had been achieved. My fields of vision were permanently damaged.
- In July of 2008, I suffered a type heart attack known as the "widow maker." Three stents were installed with therapy to follow.
- In November of 2009 I had an unsuccessful ankle replacement. The prosthesis was loose inside the ankle and caused me to be confined to a wheel chair for approximately a year and a half.
- In October of 2010 I had the corrective surgery for the ankle. Again, I was not ambulatory for about six months.
- In October of 2011, I had additional foot and ankle surgery, part of which was corrective measures to repair stroke damage. The surgery realigned my gait and helps to correct a dropped foot. I am still not fully ambulatory.